
MISSOURI AUTO SERVICE CONTRACT TASK FORCE



REPORT & RECOMMENDATIONS OF THE OFFICE OF THE ATTORNEY GENERAL OF MISSOURI

JANUARY 2011

MISSOURI AUTO SERVICE CONTRACT TASK FORCE

REPORT AND RECOMMENDATIONS OF THE ATTORNEY GENERAL OF MISSOURI

Attorney General Chris Koster appointed the Missouri Auto Service Contract Task Force in March 2010 to receive information regarding the motor vehicle extended service contract industry and to develop recommendations for an appropriate legislative and regulatory response. The task force met in Lake Saint Louis in April and June 2010, and the Office of the Attorney General has prepared this report and legislative recommendations to conclude the work of the task force.

BACKGROUND

The motor vehicle service contract industry has expanded dramatically in the last six years. On January 1, 2007, Missouri implemented laws creating a regulatory scheme for these contracts distinct from full insurance contract oversight. On January 1, 2008, these statutes were moved to Chapter 385 and placed under the authority of the Department of Insurance, Financial Institutions and Professional Registration (the “Department”) in §§385.200 to 385.220.¹ The law grants authority over service contract providers and administrators, but does not provide for direct regulatory oversight over the independent marketers. The weak regulatory structure over the telemarketing sellers of these contracts has allowed a frenzy of telemarketing fraud and deception, resulting in thousands of consumer complaints.

During this explosion of telemarketing fraud, the Missouri Attorney General and other prosecutors have waged an aggressive law enforcement campaign through civil enforcement action. In March 2008, then-Attorney General Jay Nixon announced an enforcement sweep dubbed “Operation: Taken for A Ride,” in which the attorney general sued numerous auto service contract telemarketers, including National Automobile Warranty Services, Inc.²

Some cases could also lead to criminal enforcement. As recently as December 2010, the United States Attorney for the Southern District of Illinois filed criminal charges against individuals operating Transcontinental Warranty.³ During 2009 and 2010, the Missouri Attorney General’s office has maintained twelve lawsuits against auto service contract telemarketing sellers. The volume of consumer complaints involving telemarketing of such a limited product market is unprecedented. In 2009, automobile service contract complaints were the top complaint category for the Missouri Attorney General’s office.

¹ The Motor Vehicle Extended Service Contract Law originally became effective on January 1, 2007 in Sections 407.1200 to 407.1227.

² Forty-two state attorneys general joined forces in July 2008 to conduct an investigation of this company. This telemarketing and servicing operation subsequently changed its name to US Fidelis. Missouri’s prosecution has not been resolved and is still pending. The owners, Darain Atkinson and Corey Atkinson, are now also named as defendants and the company has filed for bankruptcy.

³ *United States vs. Cowart and Sagnelli*, Case No. 10 CR 30199-GPM (S.D. Ill.).

In late 2009, members of the industry approached the Attorney General's office to offer self-regulation as a means to reduce consumer deception. In response to this request and because of the continued widespread telemarketing fraud, the Attorney General called for the formation of this task force.

Members of the Missouri Auto Service Contract Task Force include:

- Attorney General Chris Koster;
- Senator Scott Rupp;
- Director John Huff of the Department;
- Doug Ommen, Chief of the Attorney General's Consumer Protection Division;
- Jim McAdams, Deputy Director of the Department;
- Michelle Corey, President and CEO of the St. Louis Better Business Bureau;
- David Mungenast, Mungenast Automotive Family;
- Bill Schicker, McMahon Ford and Lincoln Mercury;
- Sam Barbee, Missouri Automobile Dealers Association;
- Matthew Weil, American Guardian; and
- Rebecca Howard, Paylink Payment Plans.

During its two meetings, the task force heard testimony from five consumers, the Better Business Bureau, the Vehicle Protection Association⁴ (the "VPA") and the Service Contract Industry Council⁵ (the "SCIC"). The consumers testified regarding the coverage products they had purchased, the promises that were made to them during sales calls, and the difficulties they had in using the contracts.

Industry witnesses provided information and the history of the service contract market. Parties to motor vehicle extended service contracts include the "provider" and the consumer. The provider, sometimes referred to as the "obligor," is the entity that contractually agrees to provide the reimbursement for repair service and replacement parts as needed as a result of the failure of a covered vehicle component. This obligation can be compared to the contractual obligations of an insurance company. Some contracts also include an "administrator" handling contract preparation, processing of cancellations and claims handling. Motor vehicle extended service contracts began as products available through state licensed automobile dealerships. Under current law, these service contracts can also be sold by business entities without any licensure operating as independent marketers or sellers. It is the independent marketers, most of which use direct mail and nationwide telemarketing, that have been involved in the vast majority of consumer complaints and all of the enforcement actions by the Missouri Attorney General's office.

This testimony also disclosed two different products being offered – service contracts and additive contracts – although there was no discernible difference in the marketing practices that were used to sell both products. Both products are contracts by which the obligor promised, upon consideration paid by the consumers, to compensate or reimburse the consumer if the consumer

⁴ 37232 Lighthouse Road, Suite 165, Selbyville, Delaware 19975

⁵ 204 South Monroe Street, P.O. Box 11068, Tallahassee, Florida 32302-3068

suffered loss or damage from a failure of a covered vehicle part. The most apparent difference between service contracts and additive contracts is that coverage under an additive contract is only triggered if a consumer first installs one or more additives or devices into some part of his or her car. Typically, the additive is a radiator coolant or oil supplement, although it can be as insignificant as small felt washers designed to be installed on battery posts.

The consumers also testified that they were unaware of the additive at the time of the sale, and certainly were unaware that the companies created these contracts in an attempt to circumvent insurance and service contract regulation. As a result, consumers did not understand why they received the additive or device; that the additive or device had to be used to trigger coverage; and that no refund would be given upon cancellation once the additive or device had been installed.

TESTIMONY AND COMMENTS

Below is an overview of the testimony and comments presented at the two meetings of the task force.

Donna Acosta

Donna Acosta purchased her contract from US Fidelis, Inc., formerly known as National Automobile Warranty Services, Inc. She purchased a \$2,175 contract and never received a copy of it. Had she received it, she might have seen that US Fidelis had sold her an additive contract rather than a service contract. The contract, which was never provided to Ms. Acosta, also disclosed its Limits of Liability, which allowed the obligor to pay only up to the actual cash value of the vehicle rather than the actual amount of the repair.

When Ms. Acosta's 1996 Dodge Ram required \$4,667.80 of repair, she had no idea that the obligor would pay less than \$2,000 of the repair. Moreover, the company issuing the contract or "obligor" considered itself to have no additional liability to Ms. Acosta for the rest of the term of the contract. Thus, US Fidelis sold Ms. Acosta a contract with less than \$2,000 worth of coverage for \$2,175 – a fact Ms. Acosta realized too late because she never received her contract.

Charles Hiser

Charles Hiser purchased his contract from Extended Warranty Corporation, Inc. On April 4, 2009 in response to a mailer marked "Extremely Urgent and Time Sensitive" that informed Mr. Hiser, "THIS MAY BE YOUR LAST CHANCE TO EXTEND YOUR WARRANTY COVERAGE," he called Extended Warranty Corporation, Inc. to look into purchasing an extended warranty for his vehicle. Mr. Hiser asked the Extended Warranty Corporation telemarketer to send him the contract so that he could look it over before signing it. The telemarketer responded that the offer the company was making to Mr. Hiser was "only good that evening" and that Mr. Hiser would have to pay a \$248 down payment before the contract could be sent. The telemarketer assured Mr. Hiser that he could cancel the contract within 30 days.

With this guarantee, Mr. Hiser agreed to purchase what he believed was an extended auto warranty, and he gave the telemarketer his credit card information. At the end of the call, the telemarketer informed Mr. Hiser that he would receive a bottle of coolant additive to help extend his engine life. The telemarketer told Mr. Hiser to add this coolant additive to his radiator overflow as soon as he received it; the telemarketer did not disclose to Mr. Hiser that his coverage was tied to the installation of this product.

When Mr. Hiser received the package containing his contract and the auto additive, he followed the telemarketer's instructions and immediately poured the additive into his engine, then went into the house and started reviewing the contract. It was only then that he discovered that he had purchased an additive contract, that the exclusions on coverage were much more extensive than the telemarketer had stated, and that the contract provided for a low aggregate limit to the obligor's liability. In addition, Mr. Hiser discovered that the contract mandated a \$75 fee for any cancellation, and that any cancellation required that Mr. Hiser return the unused product.

When Mr. Hiser contacted Extended Warranty Corporation to cancel, his request was initially denied because he had followed the telemarketer's instructions and installed the coolant additive in his car. Mr. Hiser eventually was able to get a refund only by contacting the contract's obligor, who in turn contacted Extended Warranty Corporation.

William "Brandon" Brubaker

Brandon Brubaker purchased his contract from Dealers Warranty, LLC, doing business as "Mogi.". He called Mogi to inquire about a service contract after his uncle passed on to him a post card offering a discount on vehicle coverage for people enrolled at college. After the telemarketer made representations about what was covered by the contract, Mr. Brubaker stated that he wanted to talk to his mom before purchasing. The telemarketer told Mr. Brubaker that he would not get the discount if he called back later, but that he could make a down payment that day and then could cancel the contract within 30 days if he did not want it. Mr. Brubaker agreed, and made a down payment. The telemarketer told him that he would receive his contract in a week.

The next day Mr. Brubaker's mother gave him an auto service contract purchased through the dealer as a birthday present. Mr. Brubaker immediately contacted Mogi to cancel the service contract, as the telemarketer had told him he could do. The Mogi representative told him that he needed the account number to cancel the contract, but he could not provide this number because he had not received the contract from the company yet. Mr. Brubaker eventually received the contract just prior to the expiration of the contract's 30-day cancellation period. He called to cancel within days of receiving the contract, but the company said that there was nothing they could do because this call had been made after the 30-day cancellation period. Mogi continued to debit Mr. Brubaker's account for 5 months after he had called to cancel. As of the day of Mr. Brubaker's testimony, Mogi had not refunded any of his money.

Ruth Portagee

Ruth Portagee purchased her contract from Warranty Activation Headquarters, Inc., now doing business as Nationwide Automotive Protection. Ruth Portagee called Warranty Activation

Headquarters in response to a letter she received from the company. The telemarketer she spoke with told her that with the Diamond coverage, she would not have to worry because everything would be covered. Ms. Portagee purchased the Interstate Diamond contract. Based on the telemarketer's statements she thought she was purchasing a bumper to bumper warranty that would give her "peace of mind." The telemarketer did not tell her about exclusions from coverage, limits to the provider's liability, the cancellation or refund policy or the existence of the contract's administrator, provider or finance company. Ms. Portagee paid \$221 down and the total \$2,211 over 18 months.

In November 2009 the timing chain on Ms. Portagee's vehicle broke and the repair was going to cost \$3,500. Ms. Portagee thought the repair would be covered because the timing chain was listed as a covered part by the contract. The obligor denied Ms. Portagee's claim because they said that the timing chain was not "broken," that Ms. Portagee caused the damage, and that the repair of the timing chain was just recommended by the mechanic and was not necessary. Ms. Portagee was unable to repair her vehicle.

Dean Scoular

Dean Scoular, an attorney, purchased his contract from US Fidelis, Inc., formerly known as National Automobile Warranty Services, Inc. When Mr. Scoular rejected US Fidelis' first price for a service contract, the salesman put him on hold and came back on the line to give him a lower price. Mr. Scoular specifically asked if this new price included bumper-to-bumper coverage, and he was told that it did. Mr. Scoular also asked to review the contract, and he was told that he would be able to review it after his purchase and that he could cancel then. Since Mr. Scoular thought that had purchased a top-of-the-line service contract, he was surprised when he received an additive in the mail. Despite his surprise, Mr. Scoular did not worry because he remembered the salesman's description of the contract as providing bumper-to-bumper coverage. When he had to take his car in for repairs, US Fidelis and the obligor on the contract denied his claims.

Testimony of Industry Representatives

Prior to the second task force meeting in June 2010, the Attorney General's office prepared a draft legislative and policy guidelines proposal. The guidelines aimed to address major problems in the industry and improve protections for consumers. At the meeting, the task force heard comments from the VPA and the SCIC.

During the task force meeting the industry representatives discussed the consumers' experiences and commented on self regulation efforts. Ms. Helen MacMurray, an Ohio attorney representing the VPA, discussed the association's newly developed standards of conduct. Mr. Timothy J. Meenan, a representative of the SCIC, provided a historical perspective on the development of the industry including an explanation that additive contracts were developed for the very purpose of evading regulatory protections for consumers. He recommended legislation improving regulatory oversight and suggested that additive contracts at least be regulated as service contracts.

Representatives of these industry groups also submitted written comments in the weeks following the meeting. The positions of these organizations are summarized in the following recommendations.

Comments of Michelle Corey of the Better Business Bureau

Task Force member Michelle Corey, President and CEO of the Better Business Bureau, provided a detailed history of the BBB's efforts in handling complaints. In three years, the BBB has received nearly 4,000 complaints against auto service contract marketers. During the same period, the BBB has received approximately 192,000 telephone inquiries about these telemarketers. Thousands of consumers complained to the BBB expressing problems similar to those testifying before the task force. Many complaints were about robo-dialing, deceptive direct mail solicitations, high pressure sales, and misrepresentations. Many consumers complained about not having the opportunity to review the contracts, refusals to process cancellations, and frivolous claim denials.

Although the BBB historically prefers to promote self-regulation, President Corey strongly endorsed regulatory oversight of the telemarketing sales agents.

Comments of Director John Huff

Task Force member John Huff, Director of the Department, offered comments on the need for better oversight over motor vehicle extended service contracts.

As for additive contracts, Director Huff found the sales and marketing to be especially troubling. While motor vehicle extended service contracts are specially exempted from the insurance laws under sections 385.200 to 385.220, the so-called additive contracts benefit from no such exemption from the insurance laws.

Contracts of insurance are contracts by which an insurer promises, upon consideration paid by the insured, to compensate or reimburse the insured if the insured suffers loss or damage in the occurrence of an event. In the case of the so-called "product warranties," the event is the failure of a specified vehicle part. Hence, these contracts as marketed by numerous telemarketers are contracts of insurance, requiring the review and authorization of his Department.

Since the Director's announcement, the Department has joined the Attorney General's Office in its lawsuits against the auto service contract telemarketers.

SUMMARY FROM THE ATTORNEY GENERAL'S OFFICE

Widespread consumer deception demands more effective regulatory oversight by the Department of motor vehicle extended service contract sales, especially those sold over the telephone. These recommendations include specific requirements for service contract delivery and licensing for the sales organizations and agents. The recommendations are enumerated in detail in this report.

While it was suggested that the law be amended to specifically include the so-called product warranties in the service contract laws, the Attorney General does not recommend this approach at this time. The Attorney General's office is increasingly receiving complaints from consumers being sold a variety of products which carry "warranty" promises covering damage wholly unrelated to the performance of the product. A piecemeal legislative approach does not offer sound consumer protection. Aggressive enforcement of Missouri's prohibition on the offer, sale and solicitation of unauthorized insurance will deter the marketing of these types of contracts in or from Missouri. While understanding the intent of bringing each newly devised contract into the scope of the insurance laws through legislation, the Attorney General concludes that unlawful insurance contracts, which are merely cast into the form of a product warranty, are substantively unauthorized insurance contracts and should be prosecuted as unlawful.

Nonetheless, the burgeoning problems related to extended service contracts require attention from the General Assembly, and the Attorney General's office stands ready to assist the Legislature in any way it can as it tackles this significant problem for Missouri consumers.

RECOMMENDATION NO. 1
REQUIRE DELIVERY OF THE CONTRACTS TO CONSUMERS

The General Assembly should enact legislation in the Motor Vehicle Extended Service Contract law, which requires all sellers of motor vehicle extended service contracts to deliver to the consumer:

- A. An executed contract within a commercially feasible time period, but no more than thirty days from the date of purchase;**
- B. Prior to the purchase, if requested by the consumer, an unsigned copy of the contract.**

The failure of sellers to make the actual contracts available to the consumer both before and after the sale may be the most significant contributor to the deception and confusion experienced by consumers in this market.⁶ The Attorney General preliminarily proposed a requirement that delivery of the executed contract be made within three business days. Interested parties⁷ expressed comment over the commercial feasibility of this approach in both the telemarketing and the face-to-face transaction at automobile dealerships. The VPA suggested that providers be given seven days rather than three to mail a service contract and argued that the three-day requirement was overly burdensome, particularly considering the free look provision was triggered by the mailing of the contract rather than the date of sale. The SCIC commented that a three-day deadline was “simply not possible” in light of industry practices and requested that the deadline be “a commercially practicable time period.”

The Attorney General recommends that the following provision be enacted:

Requirements for delivery of contracts. –

385.205. 1. It is unlawful for any provider that has authorized the sale of a motor vehicle extended service contract to fail to cause delivery to the consumer of a fully executed motor vehicle extended service contract within a commercially feasible time period, but no more than thirty days from the date of purchase. It is the mailing, or actual delivery of the fully executed contract, whichever is earlier, that commences the free look period under subsection 14 of section 385.206.

2. It is unlawful for any provider, administrator or motor vehicle extended service contract producer who offers for sale a motor vehicle extended service contract, to fail to cause delivery to the consumer of an unsigned copy of the service contract offered to the consumer prior to the time of sale upon a request of the same by the consumer. A seller may comply with this provision by providing the consumer with the copy or by directing the consumer to a website containing an unsigned copy of the service contract.

3. A violation of this section is a level two violation under section 374.049, RSMo.

⁶ Testimony of Donna Acosta, Charles Hiser, William “Brandon” Brubaker, and Dean Scoular.

⁷ Vehicle Protection Association.

RECOMMENDATION NO. 2

INSTITUTE LICENSING FOR ALL SELLERS OF THE CONTRACTS

The General Assembly should amend the Motor Vehicle Extended Service Contract law to require licensing of all sellers of motor vehicle extended service contracts, not otherwise licensed as motor vehicle dealers, financial institutions, lenders, providers or manufacturers.

Telemarketing sales of these contracts have generated an inordinate number of complaints from consumers over coverage, claims and cost.⁸ The Attorney General preliminarily proposed statutory language designed to establish agency liability for sellers and to require providers to establish a supervisory system reasonably designed to ensure compliance with both the Motor Vehicle Extended Service Contract law and the Missouri Telemarketing law. The SCIC recommended licensing, which it believes would allow the Department “to review the competency and trustworthiness of an applicant up front” and “to suspend or revoke licensure when misconduct occurs.” The SCIC also believes this approach would “ensure that the individuals associated with the license are not simply able to start a new company and seek licensure through that company.”

The Attorney General recommends that subsection 1 of section 385.206, be amended:

385.206. 1. **It is unlawful for any [No] person in or from this state to [shall directly] sell, offer for sale, or solicit the sale of a motor vehicle extended service contract to a consumer, other than the following:**

(1) A motor vehicle dealer licensed under sections 301.550 to 301.573, RSMo also holding an organizational credit entity license under section 375.065, along with its employee properly licensed as an individual credit insurance producer, offering or selling the service contract in connection with the sale of either a motor vehicle or vehicle services;

(2) A manufacturer of motor vehicles, as defined in section 301.010, RSMo;

(3) A federally insured depository institution;

(4) A lender licensed and defined under sections 367.100 to 367.215, RSMo; [or]

(5) A[n administrator,] provider[, manufacturer, or a person working in concert with an administrator, provider, or manufacturer marketing or selling a motor vehicle extended service contract demonstrating] registered with the director and having demonstrated financial responsibility as [set forth] required in section 385.202[.]; or

(6) A business entity producer or individual producer licensed under section 385.207.

....

⁸ Testimony of Donna Acosta, Ruth Portegee, William “Brandon” Brubaker, and Dean Scoular.

17. A violation of this section is a level three violation under section 374.049, RSMo.

In order to then provide to the Director the authority to license motor vehicle extended service contract producers, the Attorney General recommends that section 375.012 be amended and section 385.207 be enacted:

375.012.2(10) "Limited lines insurance", insurance involved in credit transactions, **the line of motor vehicle extended service contracts**, insurance contracts issued primarily for covering the risk of travel or any other line of insurance that the director deems necessary to recognize for the purposes of complying with subsection 5 of section 375.017;

385.207. 1. A business entity, prior to selling, offering for sale, or soliciting the sale of a motor vehicle extended service contract to a consumer under subsection 1(6) of section 385.206, is required to obtain, as appropriate, either a resident or nonresident business entity producer license under sections 375.012 to 375.018 for the limited line of motor vehicle extended service contracts.

2. A business entity applying for a resident or nonresident motor vehicle extended service contract producer license shall make application to the director on the uniform application as required.

3. An individual, prior to selling, offering for sale, or soliciting the sale of a motor vehicle extended service contract to a consumer under subsection 1(6) of section 385.206, is required to obtain, as appropriate, either a resident or nonresident individual producer license under sections 375.012 to 375.018 for either a personal lines property and casualty license or the limited line of motor vehicle extended service contracts.

4. An individual applying for a resident motor vehicle extended service contract producer license shall make application to the director on the uniform application as required, and shall be exempt from examination under subsection 7 of section 375.016.

5. An individual applying for a nonresident motor vehicle extended service contract producer license shall make application to the director on the uniform application as required. If the home state of the nonresident does not issue a license for a limited line of motor vehicle extended service contracts, the producer may receive a limited lines producer license in this state if the producer has obtained a personal lines property and casualty license in his home state.

6. The director shall adopt rules under section 385.218 relating to licensing and practices of persons acting in the capacity of motor vehicle extended service contract producers.

7. Notwithstanding any provision of sections 375.012 to 375.018, a producer license for the limited line of motor vehicle extended service contracts, if not renewed by the Director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to negotiate, sell or offer to sell any product in the limited line of motor vehicle extended service contracts.

To establish the basis for the Director's authority to discipline the licensees, the Attorney General recommends that the following provision be enacted:

385.209. 1. The director may suspend, revoke, refuse to issue or refuse to renew a registration or license under sections 385.200 to 385.220 for any one or more of the following causes:

(1) Having filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading or untrue information;

(2) Violating any provision in sections 385.200 to 385.220, or violating any rule, subpoena or order of the director or of another motor vehicle extended service contract regulator in any other state;

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing business;

(5) Misrepresenting the terms of an actual or proposed motor vehicle extended service contract or application for such contract;

(6) Having been convicted of any felony or a crime involving moral turpitude;

(7) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(8) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by any officer of any state or the United States from engaging in or continuing an act, practice or course of business involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking or finance;

(9) Is the subject of an order, issued after notice and opportunity for hearing, prohibiting a violation of law, or refusing, revoking or suspending a license, by a

service contract, financial service, investment, credit, insurance, banking or finance regulator of any state or the United States;

(10) Having a producer license or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(11) Signing the name of another to an application for license or to any document related to a motor vehicle extended service contract transaction without authorization;

(12) Unlawfully acting as a motor vehicle extended service contract producer without a license;

(13) Failing to comply with an administrative or court order imposing a child support obligation; or

(14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

2. In the event that the action by the director is not to renew or to deny an application for a license, the director shall notify the applicant or licensee in writing and advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the nonrenewal or denial of the application for a license shall be made pursuant to the provisions of chapter 621. Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.

3. The license of a business entity licensed as a motor vehicle extended service contract producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual motor vehicle service contract was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

5. Every motor vehicle extended service contract producer licensed in this state shall notify the director of any change of address, on forms prescribed by the director, within thirty days of the change. If the failure to notify the director of the change of address results in an inability to serve the insurance producer with a complaint as provided by sections 621.045 to 621.198, then the director may immediately revoke the license of the producer until such time as service may be obtained.

6. A motor vehicle extended service contract producer shall report to the director any administrative or civil action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

7. Within thirty days of the initial pretrial hearing date, a motor vehicle extended service contract producer shall report to the director any criminal proceeding initiated by any state or the United States for any violation of law by the producer. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

RECOMMENDATION NO. 3
**CODIFY THE PROVIDERS' DUTY TO MAINTAIN A REGISTRY OF MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCERS**

The General Assembly should amend the Motor Vehicle Extended Service Contract law to require all providers to maintain a registry of producers.

Telemarketing sales of these contracts have generated an inordinate number of complaints from consumers over coverage, claims and cost.⁹ The Attorney General preliminarily proposed statutory language designed to establish agency liability for sellers and to require providers to establish a supervisory system reasonably designed to ensure compliance with both the Motor Vehicle Extended Service Contract law and the Missouri Telemarketing law. The SCIC recommended licensing, which it believes would allow the Department “to review the competency and trustworthiness of an applicant up front” and “to suspend or revoke licensure when misconduct occurs.” The SCIC also believes this approach would “ensure that the individuals associated with the license are not simply able to start a new company and seek licensure through that company.”

The Attorney General recommends that section 385.211, be enacted:

385.211. 1. A provider registered to issue motor vehicle extended service contracts in this state shall maintain a register of appointed motor vehicle extended service contract producers who are authorized to sell, offer for sale, or solicit the sale of motor vehicle extended service contracts in this state. Within thirty days of a provider authorizing a producer to sell, offer for sale, or solicit the sale of motor vehicle extended service contracts, the provider shall enter the name and license number of the producer in the company registry of appointed motor vehicle extended service contract producers.

2. Within thirty days of a provider terminating a producer's appointment to sell, offer for sale, or solicit the sale of motor vehicle extended service contracts, the provider shall update the registry with the effective date of the termination. If a provider has possession of information relating to any cause for discipline under section 385.209, the provider shall notify the director of this information in writing. The privileges and immunities applicable to insurers under section 375.022 shall apply to providers for any information reported under this subsection.

3. No fee shall be charged for adding a producer to or removing a producer from the registry.

⁹ Testimony of Donna Acosta, Ruth Portegee, William “Brandon” Brubaker, and Dean Scoular.

RECOMMENDATION NO. 4
**IMPROVE CONSUMERS' RIGHTS TO PRO RATA REFUND AND
TO A FREE LOOK OPPORTUNITY**

The General Assembly should enact legislation requiring that all motor vehicle extended service contracts provide a pro rata refund in the event of cancellation and a twenty-business-day free look period.

The failure of sellers to provide refunds to consumers who canceled their contracts, especially when combined with sellers' failure to provide consumers with copies of contracts prior to purchase and the systemic misrepresentations made by the sellers' telemarketers as to contract terms was a great source of frustration to consumers who had purchased a product based on misrepresentations and could not regain their money after discovering the truth.¹⁰

The Attorney General preliminarily proposed a requirement that delivery of the executed contract be made within three business days. The SCIC noted that the Missouri Service Contract Law never expressly requires that cancellations subsequent to the free look period be allowed; the SCIC recommended clarifying that such cancellations must be allowed and that a pro rata refund must be given. The VPA requested that providers be given fifteen **business** days to mail the notice of termination so as not to cause confusions when holidays occur and to allow providers adequate time to process the notices. The VPA also requested that Subsection 14 reflect the statutory requirement that contract holders return the contract in order to obtain a full refund.

The Attorney General recommends that subsections 13 and 14 of section 385.206, be amended:

13. Motor vehicle extended service contracts shall state **that subsequent to the required free look period specified in subsection 14, a service contract holder may cancel the contract at any time and the provider shall refund to the contract holder one hundred percent of the unearned pro rata provider fee, less any claims paid. A reasonable administrative fee may be surcharged by the provider in an amount not to exceed fifty dollars. All [the] terms, restrictions, or conditions governing termination of the service contract by the service contract holder shall be stated.** The provider of the motor vehicle extended service contract shall mail a written notice to the contract holder within fifteen **business** days of the date of termination.

14. Motor vehicle extended service contracts shall **contain a free look period that** requires every provider to permit the service contract holder to return the contract **to the provider** within at least twenty business days of ~~the mailing date of the motor vehicle extended service contract or [within at least ten days if]~~ **the purchase date if** the service contract is **executed and** delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract **and the contract is returned**, the contract is void and the provider shall

¹⁰ Testimony of William "Brandon" Brubaker and Charles Hiser.

refund to the contract holder the full purchase price of the contract. **If a claim has been made under the contract during the free look period and the contract is returned, the provider shall refund to the contract holder the full purchase price less any claims that have been paid.** A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free look time periods on service contracts shall apply only to the original service contract purchaser.

RECOMMENDATION NO. 5
**STRENGTHEN THE ANTI-FRAUD PROVISIONS COVERING THE
OFFER, SALE AND SOLICITATION OF CONTRACTS**

The General Assembly should amend the Motor Vehicle Extended Service Contract law to prohibit fraud and deception in any aspect of the offer, sale and solicitation of contracts.

The telemarketers' reference to warranties, dealers and manufacturers generated a significant amount of deception and confusion experienced by consumers in this market.¹¹

The Attorney General preliminarily proposed adding the term warranty to the list of words prohibited in the names of a provider, administrator or seller. The SCIC noted that it would have considerable problems if the word "warranty" were prohibited since several of its members use the word warranty in their name and have been in the service contract industry for a significant length of time; the SCIC indicated that a safe harbor allowing those who had used it to continue using it would be acceptable.

The Attorney General recommends that section 385.208, be amended:

385.208. 1. It is unlawful for a [A] provider [~~shall not~~], administrator, motor vehicle extended service contract producer, or any other motor vehicle extended service contract seller to:

(1) [A] Use in its name the words insurance, casualty, guaranty, **warranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, **warranty** or surety business, nor shall such [~~provider~~] **person** use a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider, **provided that [F]this [section] prohibition** shall not apply to **any provider or administrator [company]** that was using any of the prohibited language in its name prior to [~~August 28, 2007~~] **January 1, 2010**[~~. However,~~] **and it [a company using the prohibited language in its name shall] discloses conspicuously in its motor vehicle extended service contract the following statement: "This agreement is not an insurance contract."**;**

(2) Directly or indirectly, represent in any manner, whether by telemarketing, broadcast marketing, electronic media, written solicitation or any other advertisement, offer or solicitation, a false, deceptive or misleading statement with respect to:

(a) An affiliation with a motor vehicle manufacturer or dealer;

(b) Possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(c) The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

¹¹ Testimony of Ruth Portagee and Charles Hiser.

(d) A requirement that such motor vehicle owner register for a new motor vehicle extended service contract with such provider in order to maintain coverage under the motor vehicle owner's current motor vehicle extended service contract or manufacturer's original equipment warranty; or

(e) Any term or provision of a motor vehicle extended service contract, including by requesting or processing a consumer's payment information before the material terms of the motor vehicle service contract are adequately explained to the consumer and the consumer confirms understanding of those terms.

A violation of this subsection is a level three violation under section 374.049, RSMo.

~~2.[A provider, manufacturer, or its representative shall not in its motor vehicle extended service contracts, or literature, make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle extended service contract].~~ **Notwithstanding subsection 6 of section 385.202 and in addition to the other prohibitions in this section, sections 375.144 to 375.146 shall apply to the offer, sale, solicitation and negotiation of motor vehicle extended service contracts.**

3. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property. A violation of this subsection is a level one violation under section 374.049, RSMo.

RECOMMENDATION NO. 6

ENHANCE DEPARTMENT REGULATION OF THE CONTRACT CONTENT

The Department of Insurance, Financial Institutions and Professional Registration should promulgate an interpretive rule to enhance its oversight of the contracts.

The failure to write the service contracts in a consumer-friendly manner had a significant adverse effect on consumers understanding the contract that they had purchased.¹²

The Attorney General recommends that the following rule be promulgated by DIFP:

20 CSR 200-18.030 Minimum Standards for Motor Vehicle Extended Service Contracts

PURPOSE: This rule specifies the minimum standards required under Section 385.206, RSMo to be found in motor vehicle extended service contracts issued by providers as allowed under Section 385.202.

No motor vehicle extended service contract which conflicts or fails to comply with any of the criteria set forth in this guideline shall be issued, sold, or offered in this state:

- (1) Clear and Understandable Language. The motor vehicle extended service contracts shall be written in such a manner that the language is likely to be comprehended by a reasonable person.
- (2) Easy to Read Type. The contracts must be in no less than 9 point type, unless more conspicuous type is required by a specific provision in this rule. All labels required in this rule shall be in no less than 12 point type.
- (3) Conspicuous Disclosure of Statutory Requirements. The contracts shall include and conspicuously disclose all provisions required by Section 385.206, RSMo and this rule:

(A) Parties to the Contract.

1. Identity of Provider. The provider, who is the obligor on the service contract, shall be identified in a conspicuous manner on the first page of the main pre-printed text of the contract in no less than 10 point type. Such identification shall include, at a minimum, the provider's name, the street address, city, state and zip code of the provider's principal place of business, a telephone number, and no less than a summary of its responsibilities as a provider.
2. Identity of Administrator. If the provider has contracted with another party to administer the terms of the contract, the administrator shall be identified in a conspicuous manner. Such identification shall include, at a minimum, the administrator's name, the street address, city, state and zip

¹² Testimony of Ruth Portagee and William "Brandon" Brubaker.

code of the administrator's principal place of business, a telephone number, and a description of its responsibilities as an administrator.

3. Identity of Service Contract Business Entity Producer. If the provider has appointed a business entity to sell, offer for sale, or solicit the sale of a motor vehicle extended service contract, the business entity producer on that contract shall be identified in a conspicuous manner and in no less than 10 point type. Such identification shall include, at a minimum, the sales agency's name, and the street address, city, state and zip code of the agency's principal place of business.

4. Identity of Contract Holder. The contract holder, who is the purchaser of the contract, shall be identified in a conspicuous manner and in no less than 10 point type. Such identification shall include, at a minimum, the contract holder's name and, if available, the street address, city, state and zip code of the contract holder.

(B) 20 Business Day Free Look Period. Motor vehicle extended service contracts shall contain a free look provision.

1. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph and shall be labeled as "Free Look Period."

2. For purposes of the 20 business day free look period, the cancellation is accomplished on the day the contract holder places the return in the mail.

3. The provision shall advise the contract holder to keep a copy of the service contract for his records, even if the fully executed contract has been returned.

(C) Purchase Price. Motor vehicle extended service contracts shall contain the total purchase price or fee. The total purchase price or fee shall be listed in a conspicuous manner and in no less than 10 point font.

(D) Terms of Coverage. Motor vehicle extended service contracts shall contain a terms of coverage provision. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Coverage – What This Service Contract Does Cover," or similar designation.

(E) Exclusions from Coverage. If the motor vehicle extended service contract contains any exclusion(s) from coverage, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Exclusions – What This Service Contract Does Not Cover," or similar designation.

(F) Exclusion for Consequential Damages or Preexisting Conditions. If the motor vehicle extended service contract contains any exclusion for consequential damages or preexisting conditions, it shall appear in the main pre-printed text of the contract,

shall appear as a separate paragraph or paragraphs, and shall be conspicuously labeled.

(G) Limitation of Liability. If the motor vehicle extended service contract contains any limitations of liability, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as “Limitations of Liability – The Maximum That Will Be Paid,” or similar designation.

(H) Deductible. If the motor vehicle service contract contains any deductible, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as “Deductible,” or similar designation.

(I) Claims. Motor vehicle extended service contracts shall contain a provision describing the procedures, terms and conditions for submitting a claim under the terms of the contract.

1. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph and shall be labeled as “What to Do If You have a Mechanical Breakdown or a Claim”, or similar designation.

2. The provision shall describe that the contract holder may submit a claim and shall describe the procedure for doing so. The name, address and telephone number of the Claims Administrator shall be included in this paragraph. If the entity responsible for paying claims is different than the entity determining whether to pay the claims, the name, street address, city, state, zip code and telephone number of each principal place of business and a description of each entities’ obligations shall be provided in this paragraph.

(J) Non-original Parts or Substitute Service. If the motor vehicle service contract contains any conditions upon which the use of non-original parts or substitute service is allowed, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as “Used Parts – When Non-original Parts or Substitute Service are Permitted.”

(K) Contract Holder’s Duties. If the motor vehicle service contract contains any obligations or duties of the service contract holder, such as the duty to protect against further damage or the duty to have certain service or maintenance performed, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as “Contract Holder Duties – What You Must Do.” If the retention of receipts is required for proof of service or maintenance performed at the time of repair, the paragraph shall conspicuously state such requirement. Only receipts from service or maintenance performed after the purchase date of the service contract may be required.

(L) Contract Holder's Rights to Cancel after 20 Business Days. Motor vehicle service contracts shall contain a provision describing the contract holder's subsequent right to cancel and obtain a refund of any unearned contract fee.

1. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph and shall be labeled as "How You May Cancel After 20 Business Days."
2. The provision shall describe that the contract holder may cancel the contract by sending a written cancellation, along with a copy of the contract to the Provider. The cancellation shall be effective on the day the cancellation is mailed by the contract holder. The name and address of the Provider shall be included in this paragraph.
3. This provision shall state that the unearned fee shall be calculated on a pro rata basis, and shall be based on the greater of the days in force or miles driven compared to the total terms of the contract.
4. The provision shall describe the Provider's obligation to pay to the contract holder a 10% penalty per month for any due refund that is not fully paid within 30 days of return of the contract to the provider from the day the contract holder places the return in the mail.
5. The provision shall advise the contract holder to retain the consumer copy of the cancelled contract.
6. The provision shall advise the contract holder that the provider will mail within 15 days a written notice of cancellation to the contract holder, which shall include a calculation of the unearned provider fee.

(M) Transferability. If the motor vehicle extended service contract contains any terms, restrictions or conditions governing the transferability of the contract, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "How this Contract May be Transferred."

(N) Missouri Department Authority.

1. Motor vehicle extended service contracts shall contain a provision describing the provider's registration status with the Missouri Department of Insurance, Financial Institution and Professional Registration pursuant to Section 385.202, RSMo. The contract shall also include the Department's telephone numbers of (800) 726-7390 and (573) 751-2640 and the website address of <http://difp.mo.gov>.
2. Motor vehicle service contracts insured under a reimbursement insurance policy under 385.202.3 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after

proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." The provision shall also provide the insurer's name and the street address, city, state and zip code of the insurer's principal place of business shall be included. Instructions on making a claim against the insurance company shall also be included. This provision shall also specify that a claim against the provider for return of unearned provider fee may be claimed against the insurer.

3. Motor vehicle service contracts not insured under a reimbursement insurance policy pursuant to 385.202.3 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy."

RECOMMENDATION NO. 7
ENHANCE DEPARTMENT REGULATION OF THE
TELEPHONE OFFERS OF THE CONTRACTS

The Department of Insurance, Financial Institutions and Professional Registration should promulgate a rule to implement its oversight of the telemarketing offer, sale and solicitation for sale of contracts.

The misrepresentations and omissions of material fact that sales representatives made during their phone calls were a material factor in consumers being tricked into purchasing these contracts.¹³

The Attorney General recommends that the following rule be promulgated by DIFP:

20 CSR 200-18.030 Telephone Offers by Motor Vehicle Extended Service Contract Producers

PURPOSE: Due to numerous conditions, limitations and exclusions typically found in motor vehicle extended service contracts, the formation of a binding motor vehicle extended service contract through an oral offer for sale is complex. Because producers and the contract holder must reach agreement on these terms in order to form a contract, the material terms of the contract must be discussed, understood and confirmed before payment is received. This rule establishes a minimum articulation of material terms and limitations in the service contract prior to requesting payment from a consumer in order for the producer to comply with the requirements of Section 385.208 and avail itself of the exemption under Section 407.1085 of Missouri's Telemarketing Practices Act.

(1) A producer selling, offering for sale, or soliciting the sale of a motor vehicle extended service contract by telephone shall, prior to requesting any payment information or agreement for payment from a consumer, describe to that consumer the particular motor vehicle extended service contract being offered.

(2) At a minimum, the producer must be familiar with and describe to the consumer the following material terms before requesting agreement for payment from a consumer or processing such payment:

(A) Contract Obligor. The legal corporate name of the service contract obligor (provider or manufacturer) that is issuing the contract must be disclosed, along with the city and state of its principal place of business. If the contract is issued by a provider, this obligor must be the provider registered as such with the Director. Because the use of a fictitious name by a legal obligor is misleading, it is not permitted.

(B) Business Entity Producer. The name of the business entity producer offering or soliciting the sale of the motor vehicle extended service contract must be disclosed, and its relationship with the provider or manufacturer issuing the motor vehicle extended service contract shall be described.

¹³ Testimony of Charles Hiser, Ruth Portagee, Donna Acosta, and Dean Scoular.

(C) Contract Administrator. The legal corporate name of the service contract administrator that is administering the contract, if applicable, must be disclosed, along with the city and state of its principal place of business, and its relationship with the obligor.

(D) Coverage. The terms used to describe coverage must reasonably summarize the actual coverage by using reference to specific parts as set forth in the specific contract being offered. The use of terms such as “power train” and “bumper to bumper” is misleading without accompanying detail summarizing specific covered parts or their categories (title plus description of major components) and relevant exclusions and conditions.

(E) Exclusions from Coverage. If exclusions from coverage exist in the service contract being offered for sale to the consumer, the material exclusions must be clearly described to the consumer. Exclusions from coverage must be described with reference to specific parts, types of coverage, waiting periods, or pre-existing conditions as set forth in the specific contract being offered.

(F) Liability Limits. If limitations to coverage exist in the service contract being offered for sale to the consumer, the limitations must be clearly described to the consumer. This disclosure would include a description of any maximum per vehicle liability limits to actual cash value of the vehicle or a specific dollar amount, and any maximum per occurrence limits.

(G) Contract Holder’s Duties. If the motor vehicle extended service contract contains any obligations or duties of the service contract holder, such as the duty to protect against further damage or the duty to have certain service or maintenance performed, including any duty to retain receipts of service or maintenance performed, the obligations must be clearly described to the consumer.

(H) Contract Price. The total purchase price of the service contract must be disclosed.

(I) Free Look period. The free look period required by law must be clearly described to the consumer.

1. For telephone sales, this is a 20 business day free look period and is up to and including the twentieth business day following the postmark date of the mailing of the contract to the contract holder as required in section 385.206.14, RSMo.

2. The name and address to which the cancellation is to be mailed shall be clearly described. Nothing more than a requirement that the service contract be returned by mail shall be required.

3. No cancellation fee or other charges are permitted for a cancellation during the free look period.

The cancellation is effective on the date of the return mailing of the service contract is postmarked.

(J) Cancellation Procedure and Consumers' Rights to Refund. The procedure and all requirements for cancellation and refund shall be clearly described to the consumer.

(K) Claims Handling. The procedure and all requirements for claims shall be clearly described to the consumer, including the name and address of the provider or third party administrator to which claims must be submitted, and a description of the duties of the provider and administrator.

(L) Mandatory Arbitration and Waiver of Rights. Any provisions which limit a consumer's rights to seek redress in the civil courts and require arbitration must be clearly and fully described to the consumer.

(3) Prior to processing any payment information or agreement for payment from a consumer, the sales agent or employee of the sales agency must confirm that the consumer understands each of the disclosures required by this rule with an affirmative response from the consumer.